

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

JERRY PATTERSON,

Petitioner,

vs.

4:09cv238-MP/WCS

TERRY DUFFEY,

Respondent.

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REPORT AND RECOMMENDATION TO TRANSFER § 2254 PETITION

Petitioner, proceeding pro se, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 and a motion to proceed in forma pauperis. Docs. 1 and 2.

Petitioner is currently incarcerated at Autry State Prison in Mitchell County, Georgia, and challenges his conviction out of Fulton County, Georgia. This court lacks jurisdiction over the petition. See Rumsfeld v. Padilla, 542 U.S. 426, 443, 124 S.Ct. 2711, 2722, 159 L.Ed.2d 513 (2004).

The § 2254 form petition and attached memorandum were styled for the Northern District of Georgia. It is unclear why the documents were mailed here, although Petitioner indicates he is unable to read or write and has apparently relied on the assistance of other inmates. Transfer is therefore appropriate.

Jurisdiction is proper in the Middle and Northern Districts of Georgia, as the districts of confinement and conviction, respectively. 28 U.S.C. § 2241(d). The district of conviction would appear to be the most convenient and appropriate venue, and the petition should be transferred to the Northern District of Georgia. See, Parker v. Singletary, 974 F.2d 1562, 1582 and nn. 114 and 118 (11th Cir. 1992) (finding transfer "in furtherance of justice" under § 2241(d)) (citations omitted); Eagle v. Linahan, 279 F.3d 926, 933, n. 9 (11th Cir. 2001) (noting the general practice in Georgia of transferring petitions to the district of conviction under § 2241(d)). It is also noted that Petitioner previously filed a § 2254 petition, challenging this same Fulton County conviction, in the Northern District of Georgia, but that petition was summarily dismissed in 2003 as Petitioner had not yet exhausted available state court remedies. Patterson v. Benton, Case Number 1:03cv1835-CAP (Atlanta Division) (docket available in PACER).

It is therefore respectfully **RECOMMENDED** that this case be **TRANSFERRED** to the United States District Court for the Northern District of Georgia for all further proceedings.

IN CHAMBERS at Tallahassee, Florida on August 14, 2009.

s/ William C. Sherrill, Jr.
WILLIAM C. SHERRILL, JR.
UNITED STATES MAGISTRATE JUDGE

NOTICE TO PARTIES

Within 15 days after being served with a copy of this report and recommendation, a party may serve and file specific, written objections to the proposed findings and recommendations. A party may respond to another party's objections within 10 days after being served with a copy thereof. Failure to file specific objections limits the scope of review of proposed factual findings and recommendations.